IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/10/2004

CORAM

THE HONOURABLE MR. JUSTICE A.K. RAJAN

Writ Petition No. 16194 of 1997

EL Forge Limited
1, Ramachandra Road
Nageswarapuram
Mylapore
Madras 41. .. Petitioner

-vs-

State Industries Promotion
Corporation of Tamil Nadu Ltd
19-A, Rukmani Lakshmipathi Road
Egmore, Chennai 8. .. Respondent

!For Petitioner .. Mr. P.S.Raman, Senior Counsel
for Mr. P.R.Raman

^For Respondent .. Mr. P.S.Setharaman

Writ petition filed under Article 226 of the Constitution of
India praying for issuance of a Writ of Certiorari as stated therein.

:O R D E R
The prayer in the writ petition is to issue a Writ of
Certiorari to call for the records relating to the respondent's communication bearing Ref.No.AD 5/GMP/113/84, dated 15.9.1997 and quash the same.
2. The petitioner is the public limited company; it has its manufacturing units at five locations in Tamil Nadu including one at SIPCOT Industrial Estate, Gumidipoondi; Plot No.67 in the Industrial Estate was allotted in favour of one Minjur Shell Castings Private Ltd.; since it defaulted in the payment, the respondent took possession and later on the property was auctioned; the offer given by M/s. Chendur Forge Exports Ltd., was accepted by the respondent; on 4.6.1993, the respondent entered into a long term lease of 99 years with M/s. Chendur Forge Exports Ltd.; by a further deed of sale, dated 28.7.1993, the respondent sold the lease hold rights to M/s. Chendur Forge Exports Ltd. together with the partially constructed factory building and it was put in possession of the land on 27.1.1993. According to Clauses 24 of the Deed, a condition is imposed that the lessee shall not directly or indirectly transfer, assign, sell, encumber or part with its interest, either in part or in full, in any manner,

whatsoever without the previous approval of SIPCOT in writing; and it is open to SIPCOT to grant or refuse approval or to impose any conditions as it considers necessary. According to Clause 30, any change in the constitution of the lessee shall have the prior approval of SIPCOT. M/s. Chendur Forge Exports Ltd. completed the factory and commenced its manufacturing activities. While so, the petitioner's shareholders and the shareholders of M/s. Chendur Forge Exports Ltd. agreed to amalgamate the two companies. Hence, Company Petitions 171 and 172 of 1995 were filed before this Court for amalgamation. This Court by order dated 11.6.1996 passed an order directing M/s. Chendur Forge Exports Ltd. to be amalgamated with the petitioner company. Thereafter, by order dated 20.6.1996 M/s. Chendur Forge Exports Ltd. was dissolved without being wound up from 20.6.1996. As per the scheme of amalgamation, approved by the High Court, all assets, business liabilities, rights and obligations, etc. of M/s. Chendur Forge Exports Ltd. became vested with the petitioner company pursuant to Sections 391 and 394 of the Companies Act. The scheme of amalgamation and the consequential merger were to become effective from 1.4.1995. Under those circumstances, the assets of M/s. Chendur Forge Exports Ltd. including the lease hold rights of the property merged with the petitioner. By letter dated 13.3.1996, the factum of amalgamation was communicated to the respondent. After receiving the communication, the respondent has sent a letter, dated 7.5.1996, stating that in view of the retrospective amalgamation, the lease hold rights of the Plot allotted to M/s. Chendur Forge Exports Ltd. should be now transferred in the name of the petitioner, subject to payment of current land cost. Accordingly, a sum of Rs.13,00,750/- was demanded by the respondent as difference in the land cost(difference in the price paid earlier by M/s. Chendur Forge Exports Ltd., and the current land cost).

3. According to the petitioner, there was no transfer of assets on winding up of M/s. Chendur Forge Exports Ltd. since that company was already dissolved without winding up, and as per the legal fiction under the Companies Act M/s. Chendur Forge Exports Ltd. has been completely amalgamated with the petitioner. In spite of such reply, the petitioner received a letter from the respondent once again demanding the difference in cost. The petitioner made a representation on 4.8.1 997 to desist from making any demand. By Order dated 15.9.1997, the respondent called upon the petitioner to pay the amount within 15 days together with interest at 21% per annum from December 1996; in case of failure to pay there is also a threat of action as per the lease deed. Hence the present writ petition to quash that order.

4. In the counter, filed by the respondent, it is stated that by lease deed dated 4.6.1993 the plot was leased out to M/s. Chendur Forge Exports Ltd.; As per clause 9 of the lease deed, the respondent had a right to cancel the lease for non-compliance of the terms and conditions of the lease deed. As per clause 30, any change in the constitution of the lessee shall have the prior approval of the respondent. Clause 2 of the Office Order of the SIPCOT:

"If there is a total change or substantial change (more than 50%) in the ownership of the unit by transfer of shares to new persons, the current land cost should be collected. The new incumbent will be asked to pay the

difference in land cost after adjusting the plot deposit paid by the original promoters."

As per Clause 3, When an existing Unit in the complex "is merged with another company, the current land cost will be collected and the new incumbent will be asked to pay the difference inland cost, after adjusting the plot deposit paid by the original promoters." M/s. Chendur Forge Exports Ltd., a major share holder, was holding 52.56% of share before merger and the same now become 28% after merger. The respondent by letter dated 21.4.1997 informed the company that as per the norms, the petitioner's request for change of name in the records could not be considered by SIPCOT; the balance land cost has to be paid; The petitioner is a new incumbent as per the Office Order of SIPCOT. The contention of the petitioner that there is no transfer, is not correct. The transfer effected by the vesting order made under Sec.394 of the Companies Act are only transfer inter vivos and not transfer by the operation of law; the revenue authorities are not bound to make necessary changes in the revenue records without any additional charges.

5. Mr. P.S.Raman, learned Senior Counsel appearing for the petitioner, submitted that by an Order of this Court, dated 11.6.1996, M/s. Chendur Forge Exports Ltd. was amalgamated with the petitioner company. Therefore, the assets and liabilities of that company has merged with the petitioner company. In that process, there is no transfer of ownership and hence the conditions provided under Clauses 24 and 30 of the lease deed do not come into play and hence the petitioner is not liable to pay the difference of cost of the land. In support of his argument, the learned Senior Counsel, referred to a Division Bench judgment of this Court in WP No.35077/02 dated 24.6.2004. In that case, the question was whether the petitioner company was entitled to the benefits of the deferral sales tax accrued to the amalgamated company. This Court has held that the amalgamating company was entitled to the benefit of the interest free deferral scheme granted to the amalgamated company. He further submitted that the amalgamating company is entitled to all the benefits of the amalgamated company. Under those circumstances, there is no need to pay any additional land cost.

6. The learned counsel for the respondent submitted that there is a change in the ownership of the company and therefore it amounts to a transfer of the property and as per the lease deed when there is a change or transfer of ownership, the difference in cost of the land on the date of such transfer is payable and hence the impugned order is legal and enforceable and the writ petition has no merits.

7. Admittedly, the land was allotted on lease by the SIPCOT to M/ s. Chendur Forge Exports Ltd.; the lease agreement between SIPCOT and M/s. Chendur Forge Exports Ltd. contains certain covenants. The following Clauses 24 and 30 of the lease deed are covenant running with the land:
"Clause No.24:
The party of the Second part shall not directly or indirectly transfer, assign, sell, encumber or part with its interest, either in part or in whole, in any manner whatsoever without the previous approval of the party of the First part in writing. It shall be open to the party of the First part

to grant or refuse approval or to impose any conditions it considers necessary;
Clause No.30:
a) Any change in the constitution of the party of the Second part shall have the prior approval of the party of the first part;
b) any change in the name and address of the Registered Office or Administrative Office of the party of the Second part should be intimated to the Party of the first part then and there."

Therefore, whoever succeeds to the rights over the property, these provisions apply to them. Clause 24 specifically provides that the lessee shall not directly or indirectly transfer, assign, sell, ... or part with interest, either in part or in full, in any manner, whatsoever, and it shall be open to SIPCOT to grant or refuse approval or to impose any conditions as it considers necessary. Clause 30 provides that any change in the constitution of the party of the second part shall have the prior approval of the party of the first part.

8. In view of these covenants running with the land, when the constitution of a company has not been approved by SIPCOT, it has a right to refuse or accept notwithstanding the fact that the Court has granted amalgamation of the two companies. Clause 24 of the lease agreement specifically provides that the lessee shall not directly or indirectly transfer, assign, sell, ... or part with its interest, either in part or in whole of the land without the previous approval of SIPCOT. By amalgamating M/s. Chendur Forge Exports Ltd. with the petitioner company, the interest in the property has been indirectly " transferred or assigned" in whole. Under those circumstances, it shall be open to SIPCOT to impose any condition as it considers necessary. The condition that was found necessary by SIPCOT is that the petitioner must pay the difference in cost.

9. The contention of the petitioner is that the amalgamation of the two companies (by Court's order) has merged the assets of the two companies and hence there is no 'transfer' of any right in the land in favour of the petitioner company. A recent decision of the Supreme Court squarely applies to the facts of the present case. When the American Company was amalgamated in the Indian Company, under a scheme of amalgamation, by High Court under Sections 391 and 394 of Companies Act, and under the Scheme the whole of the business, property, assets including leases, right of tenancy, occupancy etc., stood transferred and vested in the Indian Company, the Supreme Court held in SINGER INDIA LTD., V. CHANDER MOHAN CHADHA (2004 AIR SCW 5039) that it would make no difference insofar as the applicability of the Rent Control Act. In that case, the landlord filed a case for eviction on the ground that the tenant, the American Company, without obtaining any written consent from the landlord, had parted with the possession of the premises in

favour of the Indian Company. The contention of Indian Company that there was no transfer of any rights in view of the amalgamation order of the High Court was rejected. That was held as subletting and hence eviction was ordered.

10. On the same analogy, in the present case, the scheme of

amalgamation would make no difference insofar as the lease agreement between SIPCOT and M/s. Chendur Forge Exports Ltd. Hence there is transfer of right in the land in favour of the petitioner. Hence as per the terms of the agreement the petitioner is bound to pay the difference in price of the land/plot as demanded by the respondent.

11. The permission for amalgamation is different and it has nothing to do with the enforcement of the specific clauses in the lease deed. The amalgamation of the two companies does not alter the terms of the agreement. It is an indirect transfer of the rights inthe land. Further, Clause 3 of the Office Order of the SIPCOT provides that when an existing unit in the SIPCOT Complex is merged with another company, the current land cost will be collected and the new incumbent will be asked to pay the difference in land cost, after adjusting the plot deposit paid by the original promoters. The existing unit was merged with the petitioner company. Therefore, this clause also enables them to get the difference in cost. Though the lease deed is of the year 1993, and the Office Order was passed in the year 1994, the office order is applicable to all the lessees, including the earlier leases.
12. Therefore, the writ petition fails and the same is dismissed. No costs.

Index: Yes
Internet: Yes

pb

To
State Industries Promotion
Corporation of Tamil Nadu Ltd
19-A, Rukmani Lakshmipathi Road
Egmore, Chennai 8.